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5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**  
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8 FRANK COHN,

9 Plaintiff,

10 v.

11 RITZ TRANSPORTATION, INC., et  
12 al.,

13 Defendants.  
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2:11-CV-1832 JCM (RJJ)

15 **ORDER**

16 Presently before the court is plaintiff Frank Cohn's motion to dismiss defendants'  
17 counterclaim. (Doc. #12). Defendants Ritz Transportation, Inc., AWG Ambassador, LLC, Alan  
18 Waxler, and Raymond Chenoweth have filed an opposition<sup>1</sup> (doc. #15), to which plaintiff has replied  
19 (doc. #18).

20 Cohn, a shuttle bus driver employed by the defendants, originally filed his complaint in the  
21 Eighth Judicial District of Nevada. The complaint alleged that Cohn, and those similarly situated,  
22 worked for defendants in excess of 40 hours per week and were not compensated for their overtime  
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24 <sup>1</sup> The court notes that the opposition does not rebut any of plaintiff's jurisdictional arguments  
25 or cite any case law regarding this court's jurisdiction over the counterclaims. Instead, the  
26 opposition seeks to establish that defendants are exempt from the Fair Labor Standards Act (FLSA),  
27 because defendants are subject to regulation by the U.S. Secretary of Transportation. Such  
28 arguments are not properly before the court on this motion to dismiss, as they have no bearing on  
this court's jurisdiction over the counterclaim. As such, this court will not pass judgment on the  
applicability of the FLSA at this time.

work as required by the Fair Labor Standards Act (FLSA) and Nevada state law. *See* Compl. ¶ 6 (Doc. #1-1). The complaint also alleged various torts under Nevada common law. *See id.* ¶ 8 (improperly labeled ¶ 7). Defendants subsequently removed the case to federal court, pursuant to 28 U.S.C. §§ 1441 and 1446. This court has jurisdiction over the action pursuant to 28 U.S.C. § 1331, which grants the district courts “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

The defendants have filed a counterclaim for breach of the duty of loyalty, alleging that Cohn “by reason of his gross negligence was involved in several collisions resulting in damages to [c]ounterclaimants, in the amount of \$10,000.” Counterclaim ¶ 1 (doc. #4). The counterclaim does not contain a jurisdictional allegation.

“[F]ederal courts have supplemental jurisdiction over compulsory counterclaims, but permissive counterclaims require their own jurisdictional basis.” *See Hart v. Clayton–Parker and Associates, Inc.*, 869 F.Supp. 774, 776 (D. Ariz. 1994) (citing 6 Charles Alan Wright, Arthur R. Miller and Mary Kay Kane, *Federal Practice and Procedure*, § 1422 (1989)). Federal Rule of Civil Procedure 13(a) provides that a compulsory counterclaim “arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.”

In determining what constitutes a compulsory counterclaim, the Ninth Circuit applies a “logical relationship” test to determine whether a claim and counterclaim arise out of the same transaction or occurrence. *Montana v. Goldin*, 394 F.3d 1189, 1196 (9th Cir. 2005); *see also In re Pinkstaff*, 974 F.2d 113, 115 (9th Cir. 1992). The operative question is “whether the essential facts of the various claims are so logically connected that considerations of judicial economy and fairness dictate that all the issues be resolved in one lawsuit.” *Pochiro v. Prudential Ins. Co. of America*, 827 F.2d 1246, 1249 (9th Cir. 1987). Thus, courts must determine whether there is a substantial overlap between the facts necessary to the claim and counterclaim. *Id.* at 1251.

This court finds that defendants’ counterclaims are permissive. The FLSA claims relate to the wage payment practices of the defendants. However, the counterclaim relates to a private duty

1 under state law. The evidence, questions of fact, and questions of law required to determine the  
2 counterclaim are wholly dissimilar from those required to determine the FLSA claims. Furthermore,  
3 there is no independent basis to confer subject matter jurisdiction. The counterclaim does not  
4 implicate a federal question, *see* 28 U.S.C. § 1331, nor does it meet the requirements for diversity  
5 jurisdiction as the parties are not diverse and counterclaim seeks only \$10,000 in damages, *see* 28  
6 U.S.C. § 1332. As there is no independent basis conferring subject matter jurisdiction to this court  
7 over defendants' counterclaim, the court finds it appropriate to dismiss the counterclaim.

8 Accordingly,

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion to  
10 dismiss counterclaim (doc. #12) be, and the same hereby is, GRANTED.

11 IT IS THEREFORE ORDERED THAT defendants' counterclaim (doc. #4) be, and the same  
12 hereby is, DISMISSED without prejudice.

13 DATED February 23, 2012.

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16 **UNITED STATES DISTRICT JUDGE**  
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